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Subject: OCSPP News for December 3, 2020

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- Safer Chemicals, Healthy Families 12/2; EPA inaction means workers risk their lives using deadly paint strippers

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New York Governor signs bill to ban PFASs in food packaging

Terry Hyland, Chemical Watch

https://chemicalwatch.com/187578/new-york-governor-signs-bill-to-ban-pfass-in-food-packaging#utm_campaign=185234&utm_medium=email&utm_source=alert

New York has joined Washington and Maine as the third US state to restrict the use of per- and polyfluoroalkyl substances (PFASs) in food packaging, going further than any other state in banning the intentional addition of the substance class entirely from December 2022.

Governor Andrew Cuomo signed legislation (SB 8817/AB 4739C) on 2 December to ban the sale or distribution of food packaging with intentionally added PFASs, from 31 December 2022. His action comes as regulators in the state are working on rules to restrict levels of 1,4-dioxane in some consumer products.

The prohibition extends to paper, paperboard or other plant-fibre derived packaging or its components intended for direct contact with food. Companies found violating the law would be subject to a $10,000 first-time fine, with subsequent violations reaching up to $25,000.

The New York law also goes further than measures in Washington or Maine, where the PFAS bans are contingent on states identifying a safer alternative. It more closely follows model legislation from the Toxics in Packaging Clearinghouse (TPCH). The state coalition has said the more stringent restriction is intended to "spur innovation".

Industry groups have criticised the TPCH's approach, saying it looked only at potential hazards from certain PFASs without properly considering exposure risks. The Performance Fluoropolymer Partnership (PFP), a coalition of manufacturers, has also said the broad exclusions preclude the use of substances like fluoropolymers that provide materials that are critical to public health.

Cost is also a factor in their use in many food contact materials (FCMs), according to a recent OECD study. Some non-fluorinated alternatives may perform similarly to PFASs, but they are more expensive, the OECD said.

PFASs in FCMs

Many states – like California, Colorado, Michigan, Minnesota, New Hampshire and Wisconsin – have restricted PFASs in firefighting foams and equipment, as a way to address growing concerns about PFAS contamination in drinking water.

A number of states are now looking to expand those restrictions to other products, including FCMs.

New York's law includes language justifying the need for the ban, saying "food packaging is a key place to look for PFAS chemicals, as they often include non-stick components to repel grease". It also cites a 2017 study that said they are found in 46% of food contact papers, including in 56% of dessert and bread wrappers and 38% of sandwich and burger wrappers.

Lawmakers in Vermont and Michigan have previously introduced legislation to restrict PFASs in food packaging. The Vermont senator who introduced that state's expansive bill has said she plans to reintroduce the measure early next year.

Other states have looked to take regulatory action. California has proposed listing certain food packaging materials containing the chemicals as a priority substance under its Safer Consumer Products (SCP) programme. Wisconsin too has set up a PFAS Action Council (WisPAC) that has discussed recommendations to phase out paper products containing them.

At the federal level, Congresswoman Debbie Dingell (D-Michigan) has said she plans to make PFASs a priority in the new Congress next year.

Several restaurant chains and food retailers have also pledged to remove the substances from their food packaging, leading one NGO to suggest a potential 'tipping point' in action to move away from their use in FCMs.

New York State Bans 'Forever Chemicals' in Food Packaging

Keshia Clukey, Bloomberg Law

https://news.bloomberglaw.com/environment-and-energy/new-york-state-bans-forever-chemicals-in-food-packaging?context=search&index=2

New York state banned food containers containing a family of chemicals known as PFAS that have been linked to cancer, under legislation signed by Gov. Andrew Cuomo late Wednesday night.

Cuomo (D) approved the measure (S.8817/A.4739) prohibiting the use of per- and polyfluoroalkyl substances, or PFAS, in packaging that comes in direct contact with food starting in January 2023.

- The state Legislature passed the bill on July 23. Cuomo didn't release a statement immediately after taking action on the measure.
- Maine approved a similar bill in 2019, allowing the state's environmental protection department to ban the use of the chemicals in food packaging once safe alternatives are found. Washington State passed a similar measure into law in 2018. San Francisco and other California cities have banned PFAS in single-use bowls, plates, and utensils.
- The substances are referred to as forever chemicals because they're persistent in the environment and in human bodies. They've been linked to hormone disruptions, certain cancers and other medical conditions, according to the Environmental Protection Agency.

Cuomo signs PFAS ban in food packaging

Rick Karlin, Albany Times Union

https://www.timesunion.com/news/article/Cuomo-signs-PFAS-ban-in-food-packaging-15772554.php

Gov. Andrew Cuomo on Thursday week signed a bill to ban toxic PFAS compounds from food packaging that is commonly found in items ranging from pizza boxes to milk cartons and pastry bags, as well as being used in wrappings for meat and fish.

"When we buy food from the grocery store or takeout from a restaurant, we assume that product is safe for our families," said Democratic Assembly member Patricia Fahy of Albany, who sponsored the legislation along with Manhattan Democratic Sen. Brad Hoylman.

"PFAS - a dangerous and cancer-causing class of chemicals commonly used in everyday food packaging - however, is anything but safe for New Yorkers."

PFAS, or perfluoroalkyl and polyfluoroalkyl chemicals, have drawn public scrutiny in recent years when they have turned up in some municipal water supplies.

They can come from manufacturing, such as the case in Hoosick Falls or from firefighting foam used in fire drills, as in the Catskills community of Cairo.

Often known as "forever chemicals," due to their strong bonds, PFASs can remain in a person's blood stream for long periods of time. They are associated with cancers, thyroid malfunctions and other health problems.

The PFAS chemicals used in making substances like Teflon or firefighting foam are long-chain varieties, meaning there are more carbon atoms linking fluorines that make up the compound. Food packaging PFASs are short-chain with fewer carbon atoms, but researchers still believe they have toxic properties.

With passage of the bill, New York joins Maine and Washington states in banning PFAS from food containers.

Environmentalists cheered the decision.

"Today New York continued down the path of ridding cancer-causing PFAS chemicals from our environment by banning PFAS in food packaging," said Kate Kurera, Deputy Director of the Environmental Advocates of New York. "It is shocking just how pervasive these chemicals are and they have absolutely no place near the food we consume."

"These chemicals have already polluted the drinking water serving millions of New Yorkers, and there is no evidence that any level of exposure is safe for public health," said Liz Moran, environmental policy director for NYPIRG.

The bill signing comes on the heels of another PFAS decision in which Cuomo approved legislation to essentially ban the incineration of firefighting foam that contains the chemical.

In that bill, the governor approved a bill banning the burning of Aqueous Film Forming Foam used in firefighting, which contains PFAS chemicals. Only one location in New York had been doing that, the Norlite aggregate plant in Cohoes. They have previously burned AFFF in their kilns when they had a contract with the federal Department of Defense, as well as fire departments across the Northeast to dispose of the substance.

Industry Touts EPA's No-Risk 1,4-Dioxane Finding As New York Seeks Rules

Maria Hegstad, Inside TSCA

https://insideepa.com/tsca-news/industry-touts-epa-s-no-risk-14-dioxane-finding-new-york-seeks-rules

Soap and detergent makers are reminding New York regulators of EPA's recently released draft TSCA evaluation that found the presence of 1,4-dioxane in consumer products poses no unreasonable risks, a finding that if finalized would preempt the state officials from advancing rules they are writing to regulate the chemical

"As an important reminder, 1,4-dioxane is a byproduct of the manufacturing process; it is not intentionally added. Companies continue to work diligently to adjust manufacturing processes to remove trace amounts that have been found in cleaning and detergent products," according to a Dec. 2 statement from the American Cleaning Institute (ACI), which represents makers of soaps and detergents.

The trade group adds that EPA's "most recent analysis and conclusions show that regular use of surface cleaning, laundry, dishwashing and general purpose cleaning products does not pose an unreasonable risk to consumers related to trace concentrations of the byproduct 1,4-dioxane."

Even as ACI reminded state officials that EPA's draft evaluation, if finalized, would have the effect of preempting their rules, they and other industry representatives urged state officials at a public meeting earlier in the day to narrow the universe of products subject to any standard and to delay implementation of the standard due to the coronavirus.

The group's statement was issued minutes after the New York State Department of Environmental Conservation (NYSDEC) hosted the second of two public meetings on its plans to write a legislatively mandated rule limiting the concentration of 1,4-dioxane in cleansing, personal care, and cosmetic products, where stakeholders provided input on several facets of the pending rule.

The meetings are being held as part of NYSDEC's efforts to comply with state law S4389B, which Gov. Andrew Cuomo (D) signed in late 2019 shortly before the start of the pandemic.

The law establishes a maximum allowable concentration of 2 parts per million (ppm) of 1,4-dioxane on December 31, 2022, and 1 ppm on December 31, 2023, for household cleansing and personal care products, NYSDEC says. The law also establishes a maximum allowable concentration of 10 ppm of 1,4-dioxane on December 31, 2022, for cosmetics, the department adds.

Together with pending rules in California, the Empire State's planned regulation has been driving consumer products manufacturers and other industry groups to urge EPA to expand the scope of its pending Toxic Substances Control Act (TSCA) evaluation so that any risk management rules the agency eventually writes will have the effect of pre-empting the state regulations.

Last month, industry was rewarded when EPA released for public comment a supplemental draft evaluation that proposes to find that eight consumer uses where 1,4-dioxane is present as a byproduct poses no unreasonable risk.

If EPA were to finalize such conclusions, they are expected to pre-empt New York's consumer product regulation, as well as similar efforts ongoing in California and any other states -- regardless of the timeline of the state's action.

The draft, out for public comment through Dec. 10, focuses on the presence of 1,4-dioxane as a byproduct of the ethoxylation process, which is used to make soaps and shampoos less harsh.

Universe Of Products

Neither NYSDEC regulators nor stakeholders addressed the looming preemption issue during the state's Dec. 2 meeting about the ongoing rulemaking. Instead, stakeholders sparred over the universe of consumer products that should be subject to any rule, how to address concentrated products, how to conduct a waiver process and the possibility of setting a sell-through date.

Even as they have pressed EPA to take steps that would have the effect of preempting the state rules, industry groups, such as the Household & Commercial Products Association (HCPA), have also urged state regulators to delay the rule's implementation until a year after the resolution of the COVID-19 pandemic.

Industry argues that the pandemic has hampered their ability to reformulate their products, so New York's phase-out deadline for 1,4-dioxane in the products is no longer feasible -- especially given consumer demand for the products during the pandemic.

At the Dec. 2 meeting, environmentalists urged state regulators to broadly define products "to get as much protection as possible," according to Lakendra Barajas, an associate attorney with Earthjustice.

But industry groups argued the state could not include some products, such as sunscreen that is regulated by the Food and Drug Administration (FDA), and questioned whether household cleaners that are disinfectants registered by EPA could be part of the scope of the New York law.

On "sunscreens, those are a drug, certainly well outside the scope of this law. They are regulated under an FDA monograph," said Tom Myers, executive vice president, legal and general counsel to the Personal Care Products Council.

And a representative of paint giant Sherwin Williams asked whether registered household disinfectant products would be included in the scope or considered "out of scope" because of their EPA registrations.

A state regulator replied that the New York law's "definition in part 659 excludes registered pesticides where the product is labeled and primarily advertised as a pesticide -- something like a weedkiller. But other products used primarily for cleaning . . . right now it appears they would be captured in this definition."

Susan Kirsch, director of regulatory affairs and compliance at the Retail Industry Leaders Association, said that "could be quite confusing . . . a lot of our members are facing this with Covid-19 products ... they need to be registered. . . . I would be careful to say that [Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)]-registered products are not captured here, I think that might be confusing."

Environmentalists and industry representatives also sparred in their views on how the New York regulators should handle concentrated products, such as laundry detergent pods.

Industry speakers, for example, suggested that regulators should account for dilution prior to use, noting that many products, such as laundry detergents, contain directions for how much to use.

Martin Wolf, Seventh Generation's director of product sustainability & authenticity, argued that many companies are trying to concentrate their products for environmental reasons -- to reduce packaging waste and their shipping footprint -- and other concentrated products, like floor or household cleaners, are sold with instructions on how to dilute them for use.

"For concentrated products ... there needs to be some consideration of concentration at use rather than concentration in the water," Wolf said.

But Adrienne Esposito, executive director of the group Citizen's Campaign for the Environment, argued that is "a very slippery slope when you start talking about dilution. Is dish soap in water diluted? The same thing can be said for bath gel. . . [Dilution is] not in the law and it's not in the law for a reason -- it would really create an escape hatch for a lot of products. The intent of the law and the spirit of the law is not to create that escape hatch."

Limited Waivers

Another industry speaker, J.D. Darr, director of state government relations & public policy at HCPA, urged the regulators to advance the timeline in which companies could submit requests for limited waivers from the requirement to allow them more time to reformulate their products. He also urged the regulators to establish a sell-through date for retailers to sell remaining non-compliant product.

"Manufacturers face many pressures from retailers not to place [noncompliant] products on their shelf," he said, arguing without a sell-through date in the rule, "different retailers will use different deadlines... and we are faced with more harmful and costly [effects] to the environment, for example, dumping."

Darr was seconded by Kirsch, who also urged state regulators to "streamline" the waiver process by allowing companies to apply for a waiver "per manufacturer rather than per product."

Barajas and Esposito, however, argued that the law does not allow regulators to create a separate sell-through date. "I'm not sure how a new sell-through deadline can be established when the legislation has already established one, and doesn't establish a process for creating one," Esposito said.

Barajas added, "the law is very clear on timelines and any regulation should not veer from those established by the legislation. It is also very clear that the waiver needs to be by product. Any effort that DEC does to streamline needs to be robust by product."

US EPA faces calls to extend 1,4 dioxane consultation

Nick Hazlewood, Chemical Watch

https://chemicalwatch.com/187937/us-epa-faces-calls-to-extend-14-dioxane-consultation

The trade association representing US drinking water administrators and a coalition of environmental organisations have called on the EPA to extend by 40 days the comment period on recent additions to the agency's draft TSCA risk evaluation of 1,4 dioxane.

The NGOs have also demanded that the additions be subject to peer review by the agency's Science Advisory Committee on Chemicals (Sacc).

On 19 November the agency reported that it had supplemented the 1,4 dioxane draft evaluation by adding eight conditions of use involving consumer products. In none of these additions did the EPA find that the substance – which is mainly used as a solvent – presents an unreasonable risk to consumers or the general public.

In announcing the additions, the agency also launched a 20-day consultation period that is due to finish on 10 December.

However, in separate comments, the Association of State Drinking Water Administrators (ASDWA) and a group of 12 NGOs that includes Safer Chemicals Healthy Families (SCHF), the Environmental Defense Fund (EDF) and the Environmental Working Group (EWG), called for the consultation to be extended to 20 January.

Both sets of comments point to the impact of the intervening Thanksgiving holiday period and the effects of Covid-19 on the ability to meet what the NGOs call an "abbreviated comment period ... without precedent for TSCA risk evaluations".

The ASDWA highlights the complexity of the risk evaluation and calls for extra time so that it can "more thoroughly review" 1,4 dioxane's impact on groundwater and surface water sources of drinking water.

The NGOs point to the recent extension to the comment period on PV29. This gave 50 days in total to comment on a substance they say has "narrower uses and impacts a far smaller population than 1,4 dioxane.

And the NGOs say that the EPA's plan to proceed without a peer review is "irresponsible and further compromises the credibility of the agency's eleventh hour change of course on this important chemical".

New York limits on 1,4-dioxane may bring sustainability 'trade-offs'

Terry Hyland, Chemical Watch

https://chemicalwatch.com/187078/new-york-limits-on-14-dioxane-may-bring-sustainability-trade-offs

New York regulators charged with setting rules to limit 1,4-dioxane in cleaning products should consider the difference between ready-to-use products and concentrated solutions that are designed to be diluted, industry representatives have told the state's Department of Environmental Conservation (DEC).

Governor Andrew Cuomo signed legislation (SB 4389B) last December, setting strict limits on the amounts of 1,4-dioxane that can be in personal care and cleaning products by the end of 2022.

Regulators at the DEC are now in the process of crafting a rule to implement the law and decide how it will be applied to different products sold in the state.

For 1,4-dioxane limits in concentrated products, like capsules or pods, there needs to be consideration of the chemical's concentration at the time of product use rather than when it is sitting on the store shelf, according to Martin Wolf, sustainability director for cleaning products company Seventh Generation.

With other products – like dish liquids or shampoos – where consumers use amounts based on their level of comfort, limits on the concentration of 1,4-dioxane should "clearly" be set on a per package or per bottle basis, Mr Wolf said. But for concentrates there should be consideration of the product's dilution prior to use. And that can be easily calculated based on its instructions for adding water, he said on 2 December during a virtual public meeting on the New York law.

Concentrated products can bring sustainability benefits by reducing the plastic, packaging and transportation costs associated with shipping and selling cleaning products.

It is important to keep in mind that if concentrated products are regulated as sold – not as used – then there could be fewer concentrated cleaning products available in the state, Kate Winnebeck, senior project manager at the New York State Pollution Prevention Institute (NYSP2I), said. As a result, there will be more plastic used and more energy to transport these products, she said.

"There will have to be some trade-offs" in choosing either to focus on reducing the concentration of 1,4-dioxane or encouraging more sustainable product offerings, she said. The NYSP2I is headquartered at the Rochester Institute of Technology, and receives annual state funding that is administered by DEC.

There also is a "third choice", said Adrienne Esposito, executive director of the New York advocacy group Citizens Campaign for the Environment. That is to have products that do not include certain concentrations of cancer-causing chemicals. The law was intended to spur innovation in products, she said. Treated concentrated products differently would "create an escape hatch" for many products.

Implementation questions

The law to limit 1,4-dioxane in cleaning and personal care products was passed in part to address concerns over its presence in drinking water. The substance – one of the first ten subject to TSCA evaluation (see box) – can appear as a contaminant during the manufacturing process of certain cosmetics, detergents and shampoos.

New York's legislation puts in place a phase-down schedule that will see permissible levels set at ten parts per million (10ppm) for cosmetics, and 2ppm for certain personal care and household cleansing products, by 31 December 2022. The latter products would then have to meet a 1ppm limit by the end of 2023.

But questions remain over the scope of the legislation. And the virtual public meeting included discussion of what should qualify as a cosmetic, personal care or household cleansing product.

The DEC has said it considers household cleansing products to include "any product containing a surfactant meant to clean or cleanse", including concentrated versions. But it has also said the law does not extend to industrial cleaners or products that are primarily intended for use as a pesticide.

Facial cleansers would "probably" fall under the law's definition of a personal care product, according to one DEC official.

There was less clarity on sunscreens and other items regulated by the US Food and Drug Administration (FDA) as drugs.

Thomas Myers with the Personal Care Products Council (PCPC) said sunscreens should fall outside the scope of the New York law. And Heather Berlinski, a state government relations manager with SC Johnson, called for more information on how other products that might also be considered over-the-counter drugs would be classified under it.

The DEC plans to hold another meeting to discuss the results of a broad analysis that tested multiple products and their levels of 1,4-dioxane concentrations.

A DEC spokesperson told Chemical Watch that the department "is in the process of setting a timeline" for the meeting on test results and for the release of proposed regulations for public comment. The department will evaluate comments made during webinar sessions before proposing regulations to implement the law, they said.

ACI Offers Update on 1,4-Dioxane Regulation

HAPPI Magazine

https://www.happi.com/contents/view_breaking-news/2020-12-03/aci-offers-update-on-14-dioxane-regulation/

On December 2, the New York State Department of Environmental Conservation (DEC) held its second virtual public meeting on 1,4-Dioxane Limits for Household Cleansing, Personal Care & Cosmetics Products.

The American Cleaning Institute (ACI), representing the cleaning product supply chain, offered the following statement conveying its viewpoint on DEC's implementation of the State's 1,4-dioxane statute:

As an important reminder, 1,4-dioxane is a byproduct of the manufacturing process; it is not intentionally added. Companies continue to work diligently to adjust manufacturing processes to remove trace amounts that have been found in cleaning and detergent products.

The Environmental Protection Agency's most recent analysis and conclusions show that regular use of surface cleaning, laundry, dishwashing and general purpose cleaning products does not post an unreasonable risk to consumers related to trace concentrations of the byproduct 1,4-dioxane.

The coronavirus pandemic created an extraordinary demand for cleaning products and chemistries, understandably shifting resources and expertise within companies to address the disruptions throughout our supply chain. It's especially understandable that manufacturers small and large alike will need sufficient time to ensure compliance with the New York regulation to adjust manufacturing processes.

"ACI appreciates New York State DEC's meeting today and their focus to address the scope of the law, waiver process and to receive other general comments," said Douglas Troutman, ACI general counsel and senior vice president, Government Affairs. "As DEC's regulatory review process continues, the American Cleaning Institute and its

manufacturer members want to ensure that safe, effective and highly in-demand products remain on the shelves of New York retailers."

Environmentalists Push Biden To Give EPA Nominee Broad New Roles

Diana DiGangi, Inside TSCA

https://insideepa.com/tsca-news/environmentalists-push-biden-give-epa-nominee-broad-new-roles

Environmentalists are pushing President-elect Joe Biden to give his EPA administrator nominee broad new roles and responsibilities to address connected problems stemming from excess use of toxic chemicals, climate change, the coronavirus pandemic, racial inequality and other issues.

"An EPA administrator must be empowered to make environmental and economic decisions to achieve sustainability -- necessary for solutions to the urgent issues of climate change, pandemics, and racial inequity," the group Beyond Pesticides says in a Nov. 30 letter it is circulating among its supporters for signature.

"Tell President-elect Biden to appoint an EPA Administrator who is an environmentalist with broad environmental credentials and a vision that embraces a dramatic transition away from hazardous chemicals and polluting practices at this perilous time," the group says.

Beyond Pesticides specially calls for Biden to appoint an EPA administrator "with a vision that embraces a dramatic transition away from hazardous materials and polluting practices," "an EPA administrator who . . . has a clear vision of the changes needed to dramatically change our course."

They cite their ideal candidate as someone with a holistic approach toward the environment, "with an understanding of interrelationships in ecosystems."

This requires an understanding of the relationship between a healthy environment and a healthy economy; disproportionate risk and environmental racism; the importance of standing up to polluting industries; the existential threats facing the country and the globe; and the failure of risk assessment and unrealistic risk mitigation measures that poison people and the environment, and destroy life; and the need for meaningful results, rather than politically expedient compromises.

For example, they call for stricter controls on toxic chemicals, noting that the substances exacerbate the effects of the pandemic and disproportionately harm minority communities. "EPA has a number of responsibilities that affect the pandemic and the prevention of another future pandemic. Exposure to toxic chemicals -- especially those affecting the respiratory, immune, and nervous systems -- makes people more susceptible to the disease," Beyond Pesticides writes.

Their call comes amid some uncertainty about who Biden is expected to pick to lead EPA. According to one report, the Biden transition team is vetting three finalists to lead EPA, including California's departing air chief Mary Nichols, former EPA Region 4 Administrator Heather McTeer Toney, and Collin O'Mara, a former Delaware regulator, who is also the current CEO of the National Wildlife Federation and a Biden adviser.

Biden is not expected to name his EPA pick until after he names his attorney general nominee, the report says.

Environmental Justice

Nichols, who has pledged to take a precautionary approach to regulating chemicals in the face of scientific uncertainty, has long been viewed as a front runner, given her work regulating greenhouse gases in California and Biden's pledge to make climate change a top priority.

But others believe McTeer Toney, who is Black, could have an edge given Biden's commitment to address environmental justice issues and growing concerns from key Democrats that the president-elect has not yet named enough Black officials to key positions in his administration.

Moreover, Nichols is facing opposition from some groups who charge she is insufficiently sensitive to minority communities and various environmental justice concerns.

Friends of the Earth and the California Environmental Justice Alliance sent a Nov. 24 letter to the transition team opposing Nichols, citing in part her failure to adequately address concerns about the local emissions impacts of the state's greenhouse gas cap-and-trade program -- which allows regulated facilities to purchase "credits" to continue emitting toxic chemicals and other substances.

Nichols "has staunchly pursued and defended carbon trading, while minimizing state policies that required direct emission reductions and other climate policy implementing programs that benefit environmental justice communities," the groups wrote. Such examples of "Mary Nichols neglecting environmental justice, communities of color, and climate programs that benefit frontline communities regretfully show that she is not fit to lead an EPA that values environmental justice," they added.

Beyond Pesticides is not explicit about who it would like to see Biden pick to lead the agency, instead listing a series of criteria and issues it would want to see a new administrator address.

For example, in a press release providing additional insight into its letter, Beyond Pesticides says it wants a new administrator to win new roles and responsibilities due to existential threats like the COVID-19 pandemic, climate change, and imbalances of racial equity in EPA chemical risk assessments.

The group adds that EPA has focused on surface disinfectants as a key point of attack for fighting the virus, a position that environmentalists oppose due to the harmful health and environmental effects posed by the active ingredients of some of those disinfectants.

"EPA's programs can recognize the threats to vulnerable population groups and tighten the reins on controlling how and when we use toxic chemicals -- leading to a phase-out," Beyond Pesticides writes. "In the case of disinfectants, EPA lists disinfectants that can be used to destroy the virus on surfaces, but has done so without providing information about the risks of using those disinfectants and the availability of safer materials."

In addition, Beyond Pesticides takes issue with EPA's policy of calculating worker exposure separately from other exposures in its risk evaluations under the Toxic Substances Control Act (TSCA), and not including exposures to multiple chemicals in its risk assessments.

"Such exposures routinely affect fenceline communities, farmworkers, and factory workers," they write.

The group also calls for an administrator who will work closely with other federal agencies, writing that threats like the coronavirus pandemic and climate change require cooperation and an end to silos.

"The body of science screams for us to act on the confluence of issues that converge to threaten human life and sustainability of planet," Beyond Pesticides writes. "Therefore, the new EPA Administrator should be a visionary with a holistic vision."

Firefighting Gear Opens a New Front in PFAS Legal War (Podcast)

David Schultz, Bloomberg Law

https://news.bloombergiaw.com/environment-and-energy/firefighting-gear-opens-a-new-front-in-pfas-legal-war-podcast?usertype=External&bwid=00000176-24f8-d6d5-a976-fcfb1d390000&qid=7021030&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A53&source=newsletter&item=read-button&region=digest&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzYtMjRmOC1kNmQ1LWE5NzYtZmNmYjFkMzkwMDAwIiwic2lnIjoiRGNjWDJjNy9hZENKUEZMcTdPc2JJVzhpOTdNPSIsInRpbWUiOiIxNjA2OTk2NzcxIiwidXVpZCI6InVhZWJyRlpQOGp0M0tmNW9lWTVsUkE9PTRQTlZJY0Q0ODhCbEdTRXJlcno1SHc9PSIsInYiOiIxIn0%3D

Much of the litigation over toxic PFAS chemicals, at least thus far, has focused on the spraying of PFAS-laden firefighting foam. But now, a new avenue of lawsuits has opened up over the use of PFAS-coated firefighting gear.

Bloomberg Law reporters Andrew Wallender and Fatima Hussein join our weekly environmental podcast, Parts Per Billion, to talk about suits over these jackets, gloves, and other protective equipment. And they explain why some of the firefighters filing the suits are at odds with their own firefighting unions.

As Vaccines Near, Data On PFAS' Immune Effects Are 'Urgent Issue'

Diana DiGangi, Inside TSCA

https://insideepa.com/tsca-news/vaccines-near-data-pfas-immune-effects-are-urgent-issue

Phillipe Grandjean, the Harvard University scientist who has been studying the adverse effects of per- and polyfluoroalkyl substances (PFAS) on those suffering from the coronavirus, says that more data on the chemicals' adverse immunological effects are urgently needed, especially as coronavirus vaccines begin to be administered.

During a Dec. 2 webinar hosted by the Collaborative on Health and the Environment (CHE), Grandjean made an urgent plea for additional data to help determine whether exposure to PFAS, such as from aqueous film-forming firefighting foam (AFFF) containing PFAS, may undercut vaccines' efficacy.

"In my mind, it's a priority, it's an urgent issue, because there are populations in the United States - especially near military airports - where AFFF has been used, and contaminated the drinking water," Grandjean told the webinar audience. "There are people who have accumulated these burdens of PFAS in their bodies, and we need to know how best to protect them against COVID-19."

Grandjean's comments came just hours after the United Kingdom became the first country to approve Pfizer/BioNTech's vaccine for the virus. The vaccine is also expected to win emergency approval from the Food and Drug Administration this month, clearing the way for it to be dispensed to front-line health care workers and other vulnerable groups.

But Grandjean and others have long raised concerns that exposure to various PFAS, which have adverse immunological effects, exacerbate the effects of the coronavirus and undercut vaccines' effectiveness.

For example, the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) earlier this summer issued a statement acknowledging the possibility that exposure to PFAS could harm the immune system, undercutting the ability of COVID-19 patients to fight off the virus.

In addition, several researchers are already pursuing research projects to assess the ways that PFAS exposure could exacerbate the effects of the coronavirus, including whether PFAS exposure reduces people's resistance to COVID, whether PFAS contributes to overreaction to the virus by the immune system (thereby worsening symptoms); and whether PFAS exposure reduces the efficacy of a COVID vaccine.

Grandjean, for example, was the lead researcher on a study, published Oct. 26, that concluded that elevated levels of immunotoxic PFAS were associated with an increased risk of a "more severe course of COVID-19."

But his study, which has yet to be peer-reviewed, called for more, high-exposure research given its subjects were exposed only at low doses. "Given the low background exposure levels in this study, the role of PFAS exposure in COVID-19 needs to be ascertained in populations with elevated exposures," the study's abstract states.

Vaccines' Efficacy

During the Dec. 2 webinar, Grandjean cautioned that his study's findings suggest possible adverse implications for the efficacy of a coronavirus vaccine

Because the vaccines being developed for the coronavirus are RNA vaccines, a new principle in vaccination, Grandjean says that more study will be needed to see how factors like PFAS exposure can impact the efficacy of that type of vaccine.

The Centers for Disease Control (CDC) explain the mRNA vaccine as giving "instructions for our cells to make a harmless piece of what is called the 'spike protein.' The spike protein is found on the surface of the virus that causes COVID-19," the agency said in a Nov. 23 informational release on the new vaccines. "mRNA vaccines do not use the live virus that causes COVID-19."

Grandjean says that the amount of PFAS contamination in certain parts of the United States makes it a pressing scientific need to study how PFAS exposure might interact with either the vaccine or the virus.

During his presentation, Grandjean also referenced his previous research he had worked on, including studies involving a birth cohort in Denmark's Faroe Islands, which "linked perfluorinated alkylate substance (PFAS) exposure during infancy to decreased immune response to vaccinations at age 5 years."

By contrast, the study published Oct. 26, which Grandjean collaborated on with several of his colleagues from the University of Southern Denmark, examined data from Danish biobanks that store excess material from diagnostic tests. It looked at subjects aged 30 to 70 who had a known coronavirus infection, and measured the levels of five immunotoxic PFAS including perfluorobutyrate (PFBA) in their blood plasma, then tracked their health outcomes.

"Increased plasma-PFBA concentrations were associated with a greater severity of COVID-19 prognosis, and this tendency remained after adjustment for sex, age, comorbidities, national origin, sampling location and time," the study concluded. "Although PFBA occurred in lower plasma concentrations than most other PFASs determined, it is known to accumulate in the lungs. Thus, given the immunotoxicity of the PFASs, exposure to these persistent industrial chemicals may contribute to the severity of COVID-19."

Though a Danish study funded by Denmark's Novo Nordisk Foundation, this research was partially funded by the National Institute for Environmental Health Sciences (NIEHS), which funds Grandjean's work, including his Faroe Islands study.

Grandjean also took the webinar as an opportunity to advocate for stricter regulation of PFAS, citing the persistence of the chemicals and the many unanswered questions about their impacts as a reason to exercise caution.

"They are persistent in the environment, and we should have been, from the very beginning, much stricter with chemicals that don't break down rapidly," he said. "And looking back, we've been producing millions of tons of these chemicals. And much of that production volume is still out there for us to consume through fish or other contaminated food."

EPA's draft phthalate scopes eyes legacy uses

Inside TSCA

https://insideepa.com/tsca-takes/epa-s-draft-phthalate-scopes-eyes-legacy-uses

EPA's recently released draft scoping documents that will guide its evaluations of two manufacturer-requested TSCA evaluations of a pair of phthalates indicate the agency will consider some legacy uses for the two chemicals, according to the Bergeson & Campbell law firm, though EPA will exclude food contact and ammunition uses as the law requires.

"The draft scoping documents provide a first look into EPA's approach to evaluating these two phthalates," the law firm's Dec. 1 memo says about the draft scoping documents for diisodecyl phthalate (DIDP) and diisononyl phthalate (DINP), two chemicals widely used as plasticizers in the production of plastics and plastic coatings to increase flexibility.

"Although EPA does not specifically refer to legacy uses, EPA appears to be considering releases and exposures due to disposal and recycling of articles that contain DIDP and DINP without specifying whether such articles are already in use or may be sent for waste management in the future," the firm's memo says.

When the Trump administration first began implementing the revised Toxic Substances Control Act (TSCA) after Congress reformed it in 2016, EPA initially excluded legacy uses from its first 10 risk evaluations. The decision was part of

the Trump EPA's general policy of excluding legacy uses as well those uses of chemicals that could be regulated by another agency or statute other than TSCA.

But EPA was forced to revisit that the legacy issue after the U.S. Court of Appeals for the 9th Circuit ruled in *Safer Chemicals Healthy Families v. EPA* that the agency's risk evaluation rule unlawfully allowed the agency to exclude legacy uses from its evaluations, leaving the agency to expand its ongoing evaluation of asbestos.

The firm also notes that in the draft scope documents, "EPA specifically excludes the use of both DIDP and DINP as components in food packaging from the risk evaluation because chemicals used as food additives (including as indirect food additives, such as a component of packaging) are, by definition in TSCA Section 3(2)(B)(vi), not chemical substances for TSCA purposes. EPA also excludes the use of DIDP as a component of munitions by the exclusion of such components in TSCA Section 3(2)(B)(v)."

The draft scope documents do, however, include uses of the chemicals in toys, as requested by members of the American Chemistry Council's High Phthalates Panel. If finalized, that decision will test TSCA's preemption language because toys and other uses of DIDP and DINP are currently regulated by states and the Consumer Product Safety Commission.

Comments on the draft scope documents are due by Jan. 11, 2021.

PFAS found in mosquito spray used in US states

Cheryl Hogue, Chemical & Engineering News

https://cen.acs.org/environment/persistent-pollutants/PFAS-found-mosquito-spray-used/98/i47

Communities across the US may be polluted with toxic and persistent per- and polyfluoroalkyl substances (PFAS) from pesticides sprayed to control mosquitoes, new data suggest.

Separate testing by the advocacy group Public Employees for Environmental Responsibility (PEER) and the Massachusetts Department of Environmental Protection found PFAS in Anvil 10+10, a synthetic pyrethroid insecticide. Mosquito control programs in a number of states, including Massachusetts, spray this product from trucks and planes, PEER says.

The two analyses, each of which could detect the same 36 PFAS, found that Anvil 10+10 contained perfluorooctanoic acid (PFOA); hexafluoropropylene oxide dimer acid, a product of hydrolysis of GenX, Chemours's substitute for PFOA; perfluorobutanoic acid; and perfluorohexanoic acid, among others.

"In Massachusetts, communities are struggling to remove PFAS from their drinking water supplies while at the same time we may be showering them with PFAS from the skies and roads," says Kyla Bennett, science policy advisor for PEER.

Clarke Mosquito Control Products, which formulates Anvil 10+10, does not add PFAS to its products, a spokesperson for the Illinois company tells C&EN. Clarke checked its entire supply chain and found that PFAS were neither used as raw materials nor added to the ingredients in this product, the spokesperson adds. The US Environmental Protection Agency says in a statement provided to C&EN that Anvil 10+10's pesticide registration does not include PFAS as ingredients.

However, Bennett points out, the EPA has approved a number of PFAS for use as so-called inert ingredients in pesticides. Companies can claim the identity of these inert ingredients as trade secrets.Top of Form

Many nonpolymeric PFAS are useful surfactants and antifoaming agents and can extend the shelf life of pesticide active ingredients, Bennett says. "We do not know how many insecticides, herbicides, or even disinfectants contain PFAS," she adds.

PEER informed the EPA about the testing results in late November. The agency, which is working to reduce the public's exposure to PFAS, says it is testing additional samples of Anvil 10+10 and is developing an analytical method to detect PFAS in pesticide products.

Monsanto: Roundup did not cause cancer in Big Island men

John Burnett, Hawaii Tribune Herald

https://www.hawaiitribune-herald.com/2020/12/03/hawaii-news/monsanto-roundup-did-not-cause-cancer-in-big-island-men/

A Hawaii spokeswoman for the parent company of Monsanto Co. told the Tribune-Herald the use of Roundup herbicide isn't the cause of the cancer suffered by three Big Island men suing the chemical giant and other corporate entities.

Attorneys for Rodney I. Sunaoka, Dudley Caravalho and Alan Z. Inaba filed suit Nov. 13 in Hilo Circuit Court against Monsanto, Solutia Inc., Pharmacia Corp. and Pfizer Inc. — entities that acquired portions of Monsanto's former corporate structure.

Also named in the lawsuits are Phoenix V LLC, doing business as BEI Hawaii and, in Caravalho's case only, Farm and Garden Inc., local corporations that sell or sold Roundup.

The men, who range in age from 60 to 77, claim exposure to glyphosate — a herbicide marketed by Monsanto as Roundup — and polychlorinated biphenyls, or PCBs, manufactured and marketed by Monsanto in the U.S. until banned in 1979, caused their non-Hodgkin's lymphoma.

"While we have great sympathy for the plaintiffs, we are confident that neither our glyphosate-based herbicides nor the PCBs previously manufactured by Monsanto were the cause of their illnesses," said Monica Ivey, an Oahu spokeswoman for Bayer U.S. Crop Science, in an email. "The extensive body of science does not support a causal link between either of the products and NHL.

"Moreover, Monsanto did not manufacture the commercial products containing PCBs identified by plaintiffs and therefore was not responsible for providing warnings about any potential risks associated with them."

In 2015, the World Health Organization's cancer agency determined that glyphosate is "probably carcinogenic to humans" and California in 2017 declared the chemical a carcinogen.

The U.S. Environmental Protection Agency has made a different determination, however, ruling in April 2019 that glyphosate, the most widely used herbicide in the U.S., doesn't cause cancer when used as directed.

"The agency's scientific findings on human health risk are consistent with the conclusions of science reviews by many other countries and other federal agencies," EPA said in a press release at that time.

The EPA also struck down California's plans to require a warning label on Roundup, and its ruling was affirmed by a federal appeals court in June 2020.

At least three juries nationwide have come back with verdicts that Monsanto has acted wrongfully.

Monsanto and Bayer announced in July they intend to settle Roundup cases for $10 billion. The herbicide remains on store shelves, however, and Monsanto has denied any wrongdoing.

New EPA finding: Glyphosate harms 93 percent of endangered species

Sam Bloch, The Counter

https://thecounter.org/new-epa-finding-glyphosate-harms-93-percent-endangered-species-esa/

Another task for Biden's first 100 days—whether to rein in the controversial herbicide.

Over 93 percent of endangered species and 96 percent of their habitats are likely to be harmed by glyphosate, the ubiquitous and controversial herbicide, the Environmental Protection Agency (EPA) reported in a draft evaluation released last week.

The evaluation was conducted as part of a registration review—the agency's routine process for renewing herbicides, pesticides, and other chemicals for use in the United States every 15 years. An interim decision, released in January, paved the way for the chemical's renewal, which EPA said was safe to humans if used correctly. But the agency must now assess the herbicide's impact on nearly 1,800 protected plants and animals, pursuant to the Endangered Species Act (ESA). This law prohibits federal agencies from engaging in actions likely to "jeopardize the continued existence" of threatened or endangered species.

The initial findings are now open for 60 days of public review, after which the EPA will decide how to limit the use of the pesticide, in order to protect those plants and animals. Because of that timing, a decision to rein in the most popular farm chemical in the history of the world could be among President-elect Biden's first environmental actions. After years in which the Trump administration rolled back regulations on pesticides, and shrank the number of animals protected under the ESA, it could signal that a chastened EPA—reportedly in revolt—is coming back to life.

"This is indeed interesting and out of character," said Judith Enck, a former EPA regional administrator appointed by President Obama, in an email to The Counter. "Perhaps this is a rare moment [that] science was followed."

The impacts on endangered species are the latest finding in the long, controversial life of glyphosate. The chemical is used widely on farm fields—about 280 million pounds applied every year to soybeans, corn, cotton, and other crops, according to EPA. It's also used heavily to control weeds in watersheds, pastures, forests, roadsides—and in all likelihood, your neighbor's front lawn.

For the last two years, glyphosate has been at the center of thousands of lawsuits brought against Bayer, the pharmaceutical giant that took over Monsanto. Bayer produces Roundup, the weedkiller's most popular brand name. Juries have awarded billions of dollars in damages to plaintiffs in court cases who claimed that glyphosate caused their cancers. In June, Bayer agreed to pay $10.5 billion to settle the remaining cases.

Farmers continue to use the weedkiller at soaring levels, despite mounting evidence that overuse is causing it to become ineffective.

The question of how dangerous it is to human health remains unsettled. As part of its interim review, the EPA found that glyphosate is not likely to be carcinogenic to humans, but the International Agency for Research on Cancer, part of the World Health Organization, has concluded it probably is. The Centers for Disease Control and Prevention has also called for more research on the chemical's effect on humans. Nevertheless, farmers continue to use the weedkiller at soaring levels, despite mounting evidence that overuse is causing it to become ineffective.

"We are reviewing the EPA's draft biological evaluation for glyphosate. The safety of our products is our top priority, and we will continue to participate in this public process," a Bayer spokesperson said to The Counter in a statement. "In the meantime, the EPA's current determination—that glyphosate products pose no unreasonable risks when used according to label requirements—still stands, and growers and others can continue to use glyphosate products according to current label instructions."

In its report, EPA found that glyphosate, which affects non-farm environments predominantly through field runoff and spray drift, is "moderately to highly toxic to fish, highly to very highly toxic to aquatic invertebrates, moderately toxic to mammals, and slightly toxic to birds on an acute exposure basis." Chronic exposure causes "a variety of growth and reproductive effects" to land and aquatic animals as well as plants.

Overall, it's "likely to adversely impact" 75 endangered species of mammals, 88 endangered bird species, 36 endangered amphibian species, 33 endangered reptile species, 179 endagngered fish species, 185 endangered aquatic invertebrates, 140 endangered terrestrial invertebrates, and 940 endangered plant species.

After EPA analyzes the comments, it may consult with two federal agencies—the US Fish and Wildlife Service and the National Marine Fisheries Service, known as NOAA Fisheries—to prepare reports that would inform steps to minimize impacts. Those steps would likely take the form of restrictions, visible on labels, to limit where and when glyphosate is used. Glyphosate could, theoretically, be banned during high winds, restricted from hundred-foot buffers near water, or in some counties with sensitive habitats.

Depending on the severity of the restrictions, they could be challenged by industry, just as restrictions on dicamba and chlorpyrifos have, said Lori Ann Burd, senior attorney and environmental health program director at the Center for Biological Diversity, an environmental group that sued EPA to force the ESA review.

"The goal and the purpose here is not a glyphosate ban. It's to change the labels of glyphosate so that it's not used in a way that jeopardizes the continued existence of endangered species," said Burd. "It probably will lead to real reductions in use, and it will lead to more thoughtful use, because right now glyphosate is just sprayed in wild amounts."

Pesticide Review Board to Consider Effect of Indiana-specific Dicamba Restrictions

Enrique Saenz, Indiana Environmental Reporter

https://www.indianaenvironmentalreporter.org/posts/pesticide-review-board-to-consider-effect-of-indiana-specific-dicamba-restrictions

The Office of the Indiana State Chemist will assess how state-specific restrictions on dicamba could affect the use of the herbicide in the state.

The OISC's Pesticide Review Board voted to review the ramifications of declaring dicamba a "highly volatile herbicide," a move that could allow the state to better regulate the use of the controversial chemical in Indiana. Dicamba has been associated with crop destruction caused by drifting of the chemical from the original application site.

The decision comes after the U.S. Environmental Protection Agency approved five-year registrations of Monsanto Co./Bayer AG's XtendiMax with VaporGrip Technology and BASF's Engenia Herbicide and extended the registration for Syngenta's Tavium Plus VaporGrip for use on dicamba-tolerant cotton and soybeans until 2025.

The registrations come with new federal requirements for pesticide applicators, some of which the OISC says may not be the best fit for Indiana and may require state-specific restrictions.

Declaring dicamba a "highly volatile herbicide" would give the state chemist authority to set state restrictions on the chemical that would differ from the federal registration.

The registration allows the sale and use of the products as long as several control measures are followed, including the mandatory addition of a pH-buffering agent to tanks when the products are used, mandatory downwind buffer areas where some listed species are located, the simplification of labels and use directions and strict application deadlines for soybeans and cotton.

The EPA set a universal June 30 cutoff date for dicamba application on soybeans and July 30 for cotton, deadlines that run counter to the OISC's need determinations for Indiana.

"Realistically, if we were trying to normalize dicamba applications and the resulting off target movement incidents with every other active ingredient we know, we'd probably pick June 5 or June 10. But dicamba today is not like everything else because it will control some of those weeds that the other herbicides won't. So that's part of the calculation, but our opinion is that June 20 was helpful as a cutoff date and we would recommend it again," said OISC Pesticide Program administrator David Scott during a meeting of the Pesticide Review Board.

The OISC, which regulates agricultural laws involving pesticides, fertilizers, animal feed and seeds in the state, mostly depends on federal mandates to regulate dicamba and other pesticides, but within the last year and a half the OISC began to set its own restrictions to address dicamba issues.

When dicamba was introduced for soybeans, Indiana had no specific state restrictions or requirements until 2018, when the state mandated training for applicators. That mandate was removed in 2019.

To address a growing number of drift complaints in the state, the OISC in late 2019 set an application deadline of June 20 for the 2020 growing season.

The new deadline of June 30 could negatively affect farmers in the state.

"Without a doubt the benefit to the use of these products is that there are weeds you can't control without them. We think the cost starts getting a little high, unacceptably high, after June 20," said Scott.

The OISC investigates complaints about drift and other situations involving pesticides. Since 2017, dicamba products have been the subject of most of the OISC's drift investigations.

The OISC's June 20 deadline reduced the number of dicamba complaints by more than 55% in a single year.

The OISC found that the June 20 deadline for dicamba application reduced 66% of the year's dicamba complaints. A June 30 cutoff date only 52% of incidents.

Scott said the EPA made its registration decision without input from the state of Indiana, despite states offering to comment on label language and restrictions.

"One solution does not fit every geographic location, and I think this is an example of that. We suggested options of how they might address that. They elected to not take our advice, and they picked a date and made it universal," he said.

The OISC will review what could happen if dicamba is declared a "highly volatile herbicide." The findings will be presented at the next Pesticide Review Board meeting in mid-February.

What Lessons Should We Learn from the PFAS Crisis?

Laruen Richter, Union of Concerned Scientists

https://blog.ucsusa.org/science-blogger/what-lessons-should-we-learn-from-the-pfas-crisis

How a problem is framed often shapes the range of solutions considered. Ubiquitous global contamination by PFAS (per- and polyfluorinated alkyl substances), human-synthesized chemicals that are water and grease repellent and found in human blood, drinking water, and wildlife, is a problem that has been framed in a number of ways. While environmental regulation is often framed as driven by scientific knowledge, our research finds that in U.S. the implementation of chemical regulation is more commonly driven by scientific ignorance and corporate malfeasance.

PFAS is a family of more than 6,000 compounds often referred to as "emerging contaminants," which means that we require further study in order to adequately understand them—let alone regulate them. Yet, in truth we have decades of knowledge about PFAS, dating back to chemical manufacturers uncovering evidence of human health effects only revealed in litigation. Thus, the nature of how we experience ignorance varies greatly, depending on how one is positioned: chemical manufacturers who have discretion to disclose or withhold information, regulators who operate with limited access to data, and communities and consumers who experience total surprise when told PFAS are in their blood and drinking water.

TSCA was designed to be weak

In a peer-reviewed article just published in *Sociological Perspectives*, we argue that recent research on PFAS toxicity and exposure ubiquity are not necessarily surprising if we look at how U.S. chemical regulation was written, and who was at the table writing it, including major PFAS manufacturers. In fact, we should expect to *continue* to discover new and concerning synthetic chemicals throughout the environment, because U.S. chemical regulation is designed to rapidly approve new chemicals rather than adequately evaluate chemical danger.

Looking at the history of U.S. chemical regulation—here the 1976 Toxic Substances Control Act (TSCA)—it is notable that at the height of progressive social movement power, federal regulation of toxic substances provided only "a watered-down version of what I would call meaningful control on the production of new chemicals," as described by Senator John Durkin (D-NH). At the time, public outcry over pollution and toxic contamination was so strong that the Nixon administration felt it necessary to appear to take meaningful federal action on chemicals. It is remarkable to imagine environmental movements so powerful that Republicans would feel it necessary to make concessions, given that one contemporary Republican strategy is simply to deny science. We suggest that understanding both the power of social

movements and long-term backlash against them is critically important in attempting to understand contemporary failures of environmental law and regulation.

Reviewing testimonies and oral histories of the people involved in developing TSCA, we found that the chemical industry exerted tremendous pressure on the formulation of this law. In fact, many lawmakers, scholars, and scientists attribute the law's weakness to industry influence in the 1970s.

What does this mean today? When we interviewed scientists, exposed community members, regulators, and industry staff about PFAS, we were frequently told that our society's ignorance about PFAS is a direct consequence of TSCA's weaknesses. We learned that chemicals are typically approved in a pro forma fashion that is rushed through EPA and that hides chemical composition due to industry capacity to claim trade secret confidentiality. Hence, most chemicals are inadequately regulated, unmonitored, not tested for in the environment, and largely not treated in our drinking water and sewage treatment facilities.

While the 2016 "Lautenberg Act" to update TSCA aimed to address several of these failings, limitations in that update and major concerns about its implementation means that we remain woefully short of adequate federal chemical regulation.

Protect the public sphere and lawmaking from corporate interests

For chemicals, lack of data is essentially regarded as proof of safety. This flawed logic permeates TSCA's chemical approval process. We find that ignorance of PFAS chemicals—which ones are in use, where they are used, what their human health and environmental effects may be—magnifies over time and space. Learning that PFAS contamination is ubiquitous is thus not surprising given the structure of TSCA, and the remarkable discretion it affords the chemical industry in terms of production processes, optional testing, trade secret claims, and fundamental influence the over design of a regulatory system that favors the rapid approval of new chemicals. The public, regulatory agencies, and other federal agencies—not PFAS manufacturers—are the stakeholders best positioned to determine appropriate solutions to global, permanent PFAS contamination. However, as we have seen most dramatically under the Trump administration, the public sphere requires strong conflict of interest policies and protection against regulatory capture.

If our laws and agencies are dominated by the industries they ostensibly regulate, many more crises are on the horizon. Out of necessity, a growing number of community-based organizations in affected areas, joined by national environmental groups and independent scientists, legislators, and state regulators, have brought PFAS to public attention. The solutions to the PFAS crisis are not only more scientific research, but social movement pressure, campaign finance reform, and ensuring that lawmaking and federal policy can be done to more truly serve human health and global environmental needs in the face of growing, increasingly irreversible harm.

EPA Slammed in Court for Loose Asbestos Rules

Devin Golden, Mesothelioma Guide Blog

https://www.mesotheliomaguide.com/community/epa-asbestos-rules-reach-courtroom/

In July of 2019, nearly a dozen states filed a lawsuit against the U.S. Environmental Protection Agency (EPA). The legal action revolved around the EPA's current asbestos regulations, which many feel are far too lenient for manufacturers and importers.

The fight finally reached the courtroom, and the EPA is being taken to task.

The EPA attempted to defend its regulations two weeks ago in the U.S. District Court of Northern California. The Summary Judgement allowed the activist groups and states to press the EPA regarding its potentially dangerous asbestos loopholes.

"What we're hearing from the agency is some scientific hocus pocus," attorney Robert Sussman, representing public health advocacy groups, said.

Asbestos is the only scientifically accepted cause of mesothelioma, which forms in the narrow cavity near either the lungs or abdominal organs. It also causes cancers of the lungs and ovaries.

Asbestos is not banned (yet) in the United States. The House of Representatives nearly passed a bill to outlaw the substance in September, but lawmakers wiped it from the agenda before it reached a vote. It has not returned to the House floor since.

The EPA's current rules allow companies to receive case-by-case approval for using asbestos in their products. This regulation shifted from previous EPA leadership, which flat-out denied specific uses of asbestos with little-to-no wiggle room.

Ten states plus the District of Columbia filed a lawsuit against the EPA. Their hope was to pressure the agency into imposing stricter regulations on companies importing, producing and using asbestos.

These states have another concern regarding the EPA's asbestos rules: requirements for reporting quantities.

According to the Courthouse News Service website, the recent courtroom debate revolved around loose regulations that protect companies from disclosing how much asbestos is made, imported and added to U.S. products. The Asbestos Disease Awareness Organization asked the EPA nearly two years ago to close this loophole. The suing states agreed.

The agency has argued that "reporting is not required for 'naturally occurring chemical substances." It followed up that stricter reporting would not provide new information to the EPA.

This view contradicts the EPA's draft risk evaluation regarding asbestos. In the draft, the EPA said it lacked information on the scope of asbestos exposure for workers and consumers.

Asbestos is mostly ousted from industrial work, such as construction and insulation. It's still relevant in talc-based cosmetics and other consumer goods. Traces of asbestos were found in baby powder, makeup, children's crayons and more.

U.S. District Judge Edward Chen seemed to agree that the EPA's regulations aren't adequate.

"If additional information that may be helpful is available through narrowing some of these exemptions and requiring more robust reportage by the submitters, why is that information not reasonably available?" Chen asked, according to the Courthouse News Service report.

EPA Announces Annual Pesticide Maintenance Fee Forms Available to Download from EPA Website -- Deadline for Paying Is January 15, 2021

Heather F. Collins and Barbara A. Christianson, Bergeson & Campbell Pesticide Law and Policy Blog

http://pesticideblog.lawbc.com/entry/epa-announces-annual-pesticide-maintenance-fee-forms-available-to-download

The January 15, 2021, deadline for payment of the U.S. Environmental Protection Agency's (EPA) annual maintenance fee for pesticide registrations is approaching. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 4(i)(1)(A) requires that everyone who holds an active or suspended pesticide registration granted under FIFRA Sections 3 and 24(c) (special local needs) to pay an annual maintenance fee to keep the registration in effect. The maintenance fee requirement does not apply to supplemental registrations of distributors, which are identified by a three-element registration number.

This year, due to the COVID-19 pandemic, EPA states that most EPA staff continue to telework and are not in the EPA offices; therefore, EPA will not send maintenance fee information by mail this year. The instructions, maintenance fee filing form, fee tables, and product listings grouped by company numbers are available to download on EPA's website. When completed, the filing submission should be emailed to maintfee@epa.gov. A paper copy should not be sent to EPA.

The fee for 2021 is $4,000 for each registration up to the maximum fees that can be assessed to a single registrant. Each registrant of a pesticide must pay the annual fee and e-mail the response to EPA by Friday, January 15, 2021. Registrations for which the fee is not paid will be canceled, by order and without a hearing. As in years past, payment must be made electronically online at www.pay.gov.

For certain qualified small businesses, the first product registration maintenance fee may be reduced by 25 percent, if the applicant meets the following criteria:

1. The applicant has 500 or fewer employees globally;
2. During the three-year period prior to the most recent maintenance fee billing cycle, the applicant has average annual gross revenue from all sources that do not exceed $10,000,000; and
3. The applicant holds a total of five or fewer registrations subject to the maintenance fee.

There also are maintenance fee waivers for products that meet the criteria in two specific categories: minor agricultural use products and public health pesticides. The procedure for requesting a fee waiver for individual products is described in the instructions provided by EPA.

More information on the annual maintenance fees is available on EPA's website.

EPA inaction means workers risk their lives using deadly paint strippers

Liz Hitchcock, Safer Chemicals, Healthy Families

https://saferchemicals.org/2020/12/02/epa-inaction-means-workers-risk-their-lives-using-deadly-paint-strippers/

"No one should have to risk their life to earn a paycheck."

That's what we said 18 months ago when EPA Administrator Andrew Wheeler announced that the agency would ban sales of deadly paint strippers to everyday consumers but still allow commercial use on the job. While we applauded the consumer use ban, we had to cry foul on the failure to protect workers.

Acute exposures to paint strippers containing the dangerous chemical methylene chloride have killed as many as 85 people since 1980. Two-thirds of those people have died on the job. Many methylene chloride-based paint and coating removers are used in areas with limited ventilation, such as bathrooms, allowing fumes to build up. This can cause a heart attack or asphyxiation. Methylene chloride turns into carbon monoxide in the body and can cut off the oxygen supply to the heart. At high doses, the chemical switches off the breathing center of the victim's brain.

In addition to immediate death from acute exposure, many more workers suffer profound dangers to their health from ongoing exposure on the job. Chronic exposures to methylene chloride are associated with serious health impacts, including death, liver toxicity, kidney toxicity, reproductive toxicity, cognitive impairments, brain cancer, liver cancer, non-Hodgkin's lymphoma, and multiple myeloma.

In its recent "final risk evaluation" of methylene chloride, the EPA identified *"unreasonable risks to workers, occupational non-users, consumers, and bystanders from methylene chloride exposure under 47 out of 53 conditions of use."*

So what is being done about this?

Good question. In early 2017, EPA proposed rules to ban paint strippers containing methylene chloride for both consumer and commercial uses. Our celebration was cut short when, later that year, the Trump Administration's EPA put both rules on the backburner. In 2018, our campaign, working with partner groups like NRDC, prompted retailers with 30,000 stores to commit to stop selling the products for consumer and commercial uses.

At least four people have died using these dangerous paint strippers since EPA proposed the ban in 2017. Activism on the part of their families pushed EPA to finalize the ban on *consumer* uses.

Why now?

The real question is "Why wait?"

In June, the EPA concluded a three-year process to review the risk to human health and the environment of methylene chloride. As I note above, of the 53 uses that EPA evaluated, 47 were associated with unreasonable risk to human health, including commercial use of paint strippers containing methylene chloride. The recently reformed Toxic Substances Control Act (TSCA) requires EPA to regulate chemical substances "to the extent necessary so that the chemical substance no longer presents [unreasonable risk]." When EPA issued the draft of its evaluation, again identifying paint strippers with methylene chloride in the workplace to be unreasonable risks, we sent a letter to Assistant Administrator Alex Dunn urging EPA to finish the job and finally protect workers from these dangerous, potentially lethal products.

In March, she turned us down, citing the "ongoing risk evaluation."

What's taking so long?

EPA's initial risk assessment was issued in 2014, so it was not surprising that one of the first actions proposed under "new" TSCA when it was revised in 2016 was to ban the products. This is the kind of public health protection that we envisioned as we campaigned for TSCA reform. So, it's not a lack of authority that has kept EPA from taking action on this danger to workers.

The EPA's press release when it finalized the consumer ban said: "*Acute (short-term) exposures to methylene chloride fumes can rapidly cause dizziness, loss of consciousness, and death due to nervous system depression. People have died after being incapacitated during paint and coating removal with methylene chloride. A variety of effective, less harmful substitutes are readily available for paint removal.*"

EPA's failure to include commercial use in its March 2019 final rule left tens of thousands of workers exposed to those same dangers.

What can you do?

EPA has the authority and the responsibility to protect those most vulnerable to dangerous chemicals. No one should have to risk their life to earn a paycheck.

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